L. H. GROOMS

IBLA 83-117 Decided January 24, 1983

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, declaring mining claims null and void ab initio in part. W MC 205957 and W MC 205963.

Affirmed.

1. Act of June 25, 1910 -- Evidence: Sufficiency -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land

Mining claims located for a nonmetalliferous mineral on land which is withdrawn from mineral location for nonmetalliferous minerals are properly declared null and void ab initio. Such claims are not preserved by a recitation in the location notices that the claims were located for "bentonite and other minerals" where the claimant himself admits that there has been no evaluation of the claims "for other minerals besides bentonite," which is nonmetalliferous.

APPEARANCES: L. H. Grooms, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

L. H. Grooms appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated September 28, 1982, declaring portions of Eagle Mine Claim #4, W MC 205957, and Golden Eagle Mine Claim #4, W MC 205963, null and void ab initio. The subject portions are situated in the SW 1/4, sec. 29, T. 35 N., R. 101 W., sixth principal meridian, Park County, Wyoming. The remaining portions of these claims were previously declared null and void in a decision dated September 4, 1981. The decision was appealed to this Board, but that appeal was withdrawn.

These mining claims were located by appellant and others on January 9, 1981. 1/ BLM held the claims null and void to the extent they included land withdrawn from public entry pursuant to the Executive Order of October 27, 1920, withdrawing the lands for Public Water Reserve 75. The withdrawal includes the SW 1/4 of sec. 29.

[1] It is well established that a mining claim cannot be located upon lands not open to mineral entry. See Richard Thorpe, 59 IBLA 176 (1981). The withdrawal of the subject lands was pursuant to the "Pickett Act" of June 25, 1910, as amended, 43 U.S.C. §§ 141, 142 (1970). Therefore, these lands are not completely withdrawn from mineral entry, but are open under the mining laws of the United States only for the location of claims for metalliferous minerals. Western Nuclear, Inc., 55 IBLA 20 (1981). However, the subject lands were not subject to entry for the identified mineral, bentonite, which is nonmetalliferous. Thus, BLM had no alternative but to declare the subject portions of these mining claims null and void to entry for bentonite. David Budinski, 31 IBLA 139 (1977) (claim located for asbestos).

The thrust of this appeal is that both notices of location state that "bentonite and other minerals" are the subject of location of these claims. The sine qua non for a valid mining claim located on public lands of the United States is discovery, as the location of a mining claim conveys to the claimant no rights against the United States until there is shown a discovery of a valuable mineral deposit within the limits of the claim. 30 U.S.C. § 23 (1976). Best v. Humboldt Placer Mining Co., 37 U.S. 334 (1963). In his own statement of reasons, appellant admits, "We have not had an opportunity to evaluate these claims for other minerals besides bentonite." It is clear from the record that bentonite is the only mineral which the claimants have identified as "valuable" on these claims. Notwithstanding this admission, appellant seeks to shift the onus to BLM, saying, "I do not believe that the Bureau of Land Management has adequately assessed the actual value of these claims for numerous other minerals."

In order to establish the invalidity of a mining claim, it is not required that BLM go through a "shopping list" of all possible minerals and prove that each one, or each possible combination, is insufficient to qualify the claim, where even the claimant has not seriously asserted that a discovery of a valuable deposit of those minerals has been made. United States v. Johnson, 16 IBLA 234 (1974), aff'd, Johnson v. Morton, Civ. No. LV 75-158, RDF (D. Nev. Oct. 18, 1977). Since the totality of the record establishes the invalidity of these claims for "other minerals," it is not BLM's obligation to go beyond what the claimant has conceded and affirmatively establish the nonexistence of any qualifying but undiscovered deposit of metalliferous mineral. See United States v. Zimmers, 44 IBLA 142 (1979), aff'd, Zimmers v. Andrus, No. 81-424 (9th Cir. May 19, 1982). BLM properly declared these subject mining claims void for the reasons stated without considering all other unidentified and undefined minerals.

1/ The claims were located as association placer claims by eight individual locators. The other claimants did not appeal. It is unclear whether L. H. Grooms is qualified to represent them in practice before this Department. See 43 CFR 1.3.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing
Administrative Judge

We concur:

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Gail M. Frazier
Administrative Judge

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Bruce R. Harris
Administrative Judge